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Commonwealth of Massachusetts.

In the Year One Thousand Eight Hundred and Sixty-Eight.

[Chapter 141.]

AN ACT

TO REGULATE THE SALE OF INTOXICATING LIQUORS.

Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows:

SECT. 1. No person shall sell, or expose or keep for sale, intoxicating liquors, unless he is authorized to sell the same in the manner provided in this act: *provided*, that the maker of cider and native wines may sell the same not to be drunk on his premises; and *provided, also*, that the importer of liquor of foreign production, imported under authority of the laws of the United States, may own, possess, keep or sell the same in the original casks or packages in which it was imported, and in quantities not less than the quantities in which the laws of the United States require such liquor to be imported; and *provided, further*, that nothing herein contained shall apply to sales made by sheriffs, deputy sheriffs, coroners, constables, collectors of taxes, executors, administrators, guardians, assignees

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in insolvency or bankruptcy, or any other person required by law to sell personal property.

SECT. 2. The county commissioners for the several counties shall license to be sellers of intoxicating liquors within each city or town in their respective counties, one or more persons, being applicants therefor, and as many other such persons as in their opinion the public convenience may require, upon the terms and conditions hereinafter provided.

SECT. 3. The powers and duties of the county commissioners under this act, shall, for the counties of Suffolk and Nantucket, be vested in and discharged by three license commissioners for each county. The said commissioners shall be chosen by the people of said counties at an election to be held on the third Tuesday of May next, to hold office, one for one year, one for two years, and one for three years, from the first day of January in the year one thousand eight hundred and sixty-eight, and until their respective successors shall be qualified; and thereafter shall be chosen, at the regular November election in each year, one commissioner for each of said counties, to hold office for the term of three years from the first Wednesday of January following his election, and until his successor is qualified. Vacancies occurring in the office of license commissioner shall be filled at the next November election, for the unexpired term, and the governor, by and with the advice and consent of the council, shall appoint a commissioner to hold office during the interval.

The said license commissioners shall be paid from the treasury of the counties aforesaid, five dollars each, with their necessary travelling expenses, stationery, clerk hire and office rent, for every day actually employed in the duties of their office, and they may appoint a clerk and fix a reasonable sum as his salary.

Sect. 4. Licenses shall be granted only to the following classes of persons, for the purposes, and on payment of the fees, hereafter named, to wit:

First. Licensed innholders, to sell to be drunk on the premises, who shall pay a fee of one hundred dollars.

Second. Licensed common victuallers, to sell to be drunk on the premises, who shall pay a fee of one hundred dollars.

Third. Liquor dealers engaged in no other business in connection therewith, to sell not to be drunk on the premises, who shall pay a fee of one hundred dollars.

Fourth. Liquor dealers engaged in no other business connected therewith, to sell to be drunk on the premises, who shall pay a fee of one hundred dollars.

Fifth. Grocers, apothecaries and druggists: to sell not to be drunk on the premises, who shall pay a fee of fifty dollars.

Sixth. Brewers and distillers. Brewers and distillers may sell intoxicating liquors, of their own manufacture, and at their place of manufacture, or their regular place of business, in quantities of not less than thirty gallons, the whole to be exported from the state, and no part thereof to be used therein, and the burden shall be upon such persons, in any proceeding under this act, to prove that the sale was for exportation, as aforesaid. Brewers and distillers may be licensed to sell not to be drunk on the premises, for a fee of one hundred dollars. Any person or persons, non-residents of this Commonwealth, engaged in selling, trading or vending intoxicating liquors, and any hawker, peddler, or travelling agent, engaged in selling for any person or persons who are non-residents of this Commonwealth, or who have no licensed place of business established therein, are hereby prohibited from making sales, offering for sale, vending, trading, or contracting, in any manner whatsoever, in intoxicating liquors, within the limits of this Commonwealth. And any person so selling, offering for sale, vending, trading or contracting, shall be liable to a fine

not exceeding five hundred dollars, and imprisonment not exceeding six months.

SECT. 5. If any person having a license to sell to be drunk on the premises shall be found to have been at the time the license was granted engaged in or shall afterwards engage in the business of a grocer, apothecary, druggist, brewer or distiller, on the premises described in his license, or in any place connected therewith, his license shall thereby be forfeited, and he shall not be licensed for a period of one year after the expiration of the term of the forfeited license, and no license shall be granted to be exercised on the premises described in the license so forfeited, for the residue of the term thereof.

SECT. 6. The inhabitants of any city or town may, on the third Monday in May next, and thereafter, at their regular annual meeting for the choice of city or town officers, vote that no license shall be granted in such town or city which will authorize the sale, to be drunk on the premises, of either distilled or fermented liquors, or both. In which case the commissioners shall grant no such license, except to licensed innholders to sell to their actual and *bona fide* guests.

SECT. 7. Every license shall be signed by the major part of the commissioners, and recorded; shall bear the date of the day when issued; shall specify the building in which sales of liquors are authorized to be made, and, where practicable, the part of the building; and whether said liquors may or may not be drunk on the premises of the person licensed; and shall expire on the first day of May, unless sooner adjudged to be void. One dollar shall in all cases be paid to the clerk of the commissioners, by the person receiving the license, in addition to the fee herein provided.

SECT. 8. It shall be the duty of the commissioners to report to the mayor and aldermen of each city, and to the selectmen

of each town, within their respective counties, the licenses they intend to issue within such city or town ; which report shall be made fourteen days before the license would take effect. And if the mayor and aldermen or the selectmen shall, before the time for a license to take effect, in writing object to any license on the ground of the personal unfitness of the licensee to exercise the license in question, such license shall not be issued unless such commissioners, after a full hearing, shall otherwise determine.

SECT. 9. It shall be the duty of the commissioners to revoke any license upon proof satisfactory to them that the licensee has violated, or permitted to be violated, any of the provisions of this act, after a summary hearing of the licensee, or notice and reasonable opportunity for him to be heard. After such revocation, the licensee shall not be licensed for one year after the expiration of the term of the license so revoked; and no license shall be granted to be exercised on the premises described in the license so revoked, for the residue of the term of the revoked license. And the commissioners shall give to the municipal authorities of any city or town, notice of the revocation of any license granted to be exercised therein.

SECT. 10. A license to sell intoxicating liquors, to be drunk on the premises of the person licensed, shall confer no authority to sell between the hours of twelve o'clock in the night and five o'clock in the next morning, nor during any part of the Lord's day : *provided, however*, that innholders shall have the right at all times to furnish their guests with any article which they shall by license be authorized to sell, but not to keep or maintain a public bar on the Lord's day ; and *provided*, that apothecaries and druggists may sell liquors at such times, on a requisition of a licensed medical practitioner therefor, made out and signed during the prohibited period or periods, not to be drunk on the premises.

SECT. 11. No licensed person shall sell intoxicating liquor to any intoxicated person, or to any person under twenty-one years of age.

SECT. 12. All fees for licenses under this act shall be paid to the commissioners of the respective counties wherein the same are granted; and the said commissioners shall, on the first day of every alternate month, beginning with the month of June in each year, pay over to the treasurer of each town or city one-half of the fees received by them for licenses, to be exercised in such town or city, and the residue of their receipts to the treasurer of the Commonwealth; and any officer neglecting to make such payment shall forfeit the sum of fifty dollars for each and every day said sum received by him as aforesaid shall be retained in violation of this section.

SECT. 13. The several commissioners shall, on the first day of every alternate month, beginning with the month of June in each year, return to the secretary of the Commonwealth the name of each person licensed, his place of residence, the date and character of his license, and the amount of his license fee. Any officer neglecting to make such return shall forfeit and pay the sum of fifty dollars for each offence.

SECT. 14. The said commissioners, and the mayor and aldermen of any city, and the selectmen of any town, and any police officer or constable specially authorized by them, may at any time enter upon the premises of any persons licensed under this act, to ascertain the manner in which such persons conduct their business, and to preserve order therein. And such officers may at any time take samples for analysis from any liquors kept by such licensed persons; and in case said liquors are found to be pure or of good quality, the expense of such analysis shall be paid by the treasurer of the city or town whose officers demanded the analysis; but if such liquors are found to be

impure or of bad quality, the expense of the analysis shall be paid by the licensed person, and may be recovered upon a complaint made by the treasurer of the city or town in which said samples were taken, against such licensed person, who shall thereupon forfeit his license, and shall not be licensed again within three years, and no license shall be granted to be exercised on the premises described in the license so forfeited, for the residue of the term thereof. Proceedings for the recovery of the expense of said analysis, and for the decree of forfeiture of said license, may be had before any municipal or police court, or any trial justice, and such court or justice may also order such liquors, found to be impure or of bad quality, to be destroyed.

SECT. 15. When any person, by the excessive use of intoxicating liquor, injures his health, exposes his family to want or violence, or the town or city of his settlement to expense, the mayor and aldermen and the selectmen of such town or city, shall, in writing, forbid any licensed person to sell or deliver to him any such liquor, for the residue of the year of his license; and they may, in like manner, forbid any person licensed in any other city or town, to sell or deliver such liquor to such person, during the time aforesaid; and said prohibition shall be recorded by the city or town clerks, in a record book of said city or town, and the mayor and aldermen and selectmen shall, in like manner, from year to year, renew such prohibition, as to such persons as, in their opinion, shall not have reformed.

SECT. 16. If any person during the time of such prohibition, and having notice thereof, whether by the official notice aforesaid or otherwise, shall give or sell to, or purchase or procure for or in behalf of, any such prohibited person, any intoxicating liquor, he shall be punished by a fine not exceeding fifty dollars, or imprisonment in the house of correction for a term not exceeding six months.

SECT. 17. A married woman may have an action of tort in her own name, against any person who has sold or given to, or purchased or procured for her husband any liquors, in violation of the two preceding sections, and may recover compensation for any loss or injury accruing to her thereby, and whatever she may recover shall be her own property; and any child of a person living with, and dependent in whole or in part upon said person to or for whom any liquor may have been sold, given, purchased or procured in violation of the two preceding sections, may have a like action in his own name, or if a minor in the name of guardian or next friend, and may recover compensation for any loss or injury accruing to him thereby, and whatever may be recovered shall be his own property. And any person may have a like action to recover compensation for any loss or injury accruing to him by means of any such sale, gift, purchase, or transfer in violation of the two preceding sections.

SECT. 18. Any person convicted of a violation of any of the provisions of this act, shall be punished by a fine not exceeding five hundred dollars, and confinement at hard labor in the house of correction not exceeding six months.

Any licensed person so convicted shall, in addition to said penalties, forfeit his license, and shall not again be licensed for the period of one year after the expiration of the term of his license; and no license shall be granted to any person under this act to be exercised on the premises described in the said forfeited license during the residue of the term thereof.

SECT. 19. If a violation of the terms or provisions of this act shall be committed on the premises in which a license is authorized to be exercised, the licensee shall forfeit his license, unless he shall satisfy the authorities having power to revoke the same or to decree it forfeit, that the violation took place

without his knowledge and against his will, and that he had used due care and diligence to prevent the occurrence thereof. In case of a violation of any of the terms of the license, or of any of the provisions of this act, the license may be revoked by the commissioners, as provided in this act, or it may be decreed forfeit, as part of the judicial decree or judgment where proceedings are had before any court or justice for any other purpose named in this act, and the pendency of such proceedings shall not suspend or interfere with the authority of the commissioners to revoke the same.

SECT. 20. The delivery of intoxicating liquor in or from any building, booth, stand or other place, except a private dwelling-house, or in or from any private dwelling-house, if any part thereof or its dependencies is used as an inn, eating-house or shop of any kind, or other place of common resort,—such delivery in either case being to any person not *bona fide* a resident therein,—shall be *prima facie* evidence that such delivery is a sale of intoxicating liquors.

SECT. 21. The terms intoxicating liquors or liquors in this act shall be construed to include ale, porter, strong beer, lager beer, cider and all wines, as well as distilled spirits.

SECT. 22. Every person licensed as aforesaid, shall keep a true account of the liquors consigned to him for sale, or purchased by him, and the original bills of sale or invoices of the same, specifying the name and place of business of the person of whom the same was purchased, and the date of each purchase and the price thereof; and he shall, before the first day of every alternate month, beginning with the month of May in each year during which such license shall be in force, return to the treasurer of the city or town within which the business under such license is carried on, a true account, under oath,

of all liquors sold, given away or disposed of by him during the then preceding two months, with the true value thereof according to the price at which the same were sold; and he shall thereupon within the five days from and after the said first days of every alternate month respectively, pay to said treasurer or to the collector of taxes of said city or town, at their offices respectively, the following tax upon the value of the liquors so sold, given away or disposed of, to wit: innholders, common victuallers, and liquor dealers selling to be drunk on the premises, two per cent.; brewers, licensed under the fourth section of this act and vendors of malt liquors, to be carried away and not to be drunk on the premises, at the rate of five cents a barrel of thirty gallons; all other licensed persons one per centum. And in case the city or town treasurer to whom such return is made as aforesaid, shall have reason to suspect or believe that the said return is false or fraudulent, and shall so declare under oath, the person making such return shall, when requested, produce to the said treasurer, or to any other person or persons by him duly authorized to examine the same, his books and accounts showing the amount of his purchases, consignments and sales, and his bills and vouchers therefor, and shall make true answers in writing, to be signed by him and under oath, to any questions proposed to him by said treasurer or other person or persons duly authorized by him as aforesaid, in relation to said liquors and his dealings in respect to the same. A failure to make any return or payment required to be made under this section, or to comply with any other of the provisions of the same, or any false swearing in such return, or in the answers to the questions which may be proposed as aforesaid, shall be a forfeiture of said license, and upon satisfactory evidence thereof said commissioners shall revoke and annul the same, and no license shall be granted to the licensee for the period of one year after the expiration of the term of the license so revoked.

SECT. 23. If any person licensed under the provisions of this act shall fail to make the returns and payments required by the twenty-second section of this act, or shall make a false return, or false answers to any questions proposed to him by the treasurer, as therein provided, it shall be the duty of the collector of taxes of said city or town, or his deputy, to make complaint thereof to the commissioners, and he shall give seasonable notice to the licensee to appear before said commissioners, and answer to such complaint; and the said commissioners, if such complaint shall be established to their satisfaction, shall revoke said license; and they shall also determine whether any tax still remains due and unpaid from such licensee, and shall fix the amount thereof at their discretion; and they shall deliver to the collector of taxes of said city or town, or his deputy, a warrant for the collection of said tax, and the collector shall have for this purpose all the powers conferred on him by law for the collection of taxes on personal property.

SECT. 24. Collectors of taxes may for the purposes of this act appoint deputies, who shall give such bonds for the faithful discharge of their duties as the mayor and aldermen or selectmen may think proper. They shall within ten days after the said first days of May and November in each year make return to the treasurer aforesaid of the amounts of money received or collected by them under this act, and pay the same to said treasurer, who shall within thirty days thereafter pay over one-half thereof to the treasurer of the Commonwealth, and any treasurer of any city or town neglecting to make such payment shall forfeit the sum of fifty dollars for each day said sum of money so received by him shall be retained in violation of this section.

SECT. 25. The municipal courts of any cities, trial justices in their respective counties, and police courts within their dis-

tricts, shall have jurisdiction concurrent with the superior court over all violations of the provisions of this act.

SECT. 26. The eighty-sixth chapter of the General Statutes, and all acts and parts of acts inconsistent herewith, are hereby repealed.

[*The foregoing Act having been laid before the Governor on the Seventeenth of April, and not being returned by him with his objections within five days after receiving the same, as prescribed by the Constitution, became a law, and "will take effect on the thirtieth day next after" the 23d day of April inst.*]

Commonwealth of Massachusetts.

In the Year One Thousand Eight Hundred and Sixty-Eight.

[Chapter 311.]

AN ACT

IN ADDITION TO AN ACT TO REGULATE THE SALE OF INTOXICATING LIQUORS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:—

SECT. 1. The election required by section three of chapter one hundred and forty-one of the acts of the year eighteen hundred and sixty-eight, entitled "An act to regulate the sale of intoxicating liquors," to be held on the third Tuesday of May, shall be held on any day in the month of June of the current year, anything in said act to the contrary notwithstanding.

SECT. 2. The county commissioners of the several counties shall receive, in addition to their present salaries, at the rate of three dollars per day for each and every day when engaged as license commissioners under said chapter one hundred and forty-one of said acts of the current year, to be paid from the county treasury.

SECT. 3. The sixth section of the act referred to in the first section of this act is hereby amended by striking out "third Monday of May" and inserting "any day in the month of June of the current year."

SECT. 4. The fourth clause of the fourth section of the act referred to in the first section of this act is hereby repealed: *provided, however*, that licenses may be granted for the sale of beer, ale, porter and cider, to be drunk on the premises, for which a fee of fifty dollars for each license shall be paid; persons holding such licenses to be subject to the taxes and all other obligations and duties applicable to them under the said act.

SECT. 5. Sections four, sixteen and eighteen of said chapter one hundred and forty-one, are hereby so far amended that in the sentences therein provided, the court may inflict the punishment of imprisonment without the fine, or fine without imprisonment, or both, at its discretion.

SECT. 6. The tenth section of the act referred to in the first section of this act is hereby amended by striking out the word "licensed" immediately before the words "medical practitioner" and inserting in the place thereof the word "regular," and by striking out the words "out and signed."

SECT. 7. This act shall take effect upon its passage.

[*Approved June* 5, 1868.

Commonwealth of Massachusetts.

In the Year One Thousand Eight Hundred and Sixty-Eight.

[Chapter 318.]

AN ACT

IN FURTHER ADDITION TO AN ACT TO REGULATE THE SALE OF INTOXICATING LIQUORS.

Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows:—

SECT. 1. The mayor and aldermen of the cities of Boston and Chelsea, and the selectmen of the towns of North Chelsea and Winthrop shall, upon the passage of this act, issue their warrants for the election of three special commissioners for the county of Suffolk, under the act of which this is an amendment, in their respective cities and towns, to be holden on the third Wednesday of June of the current year. And the said mayor and aldermen and selectmen shall, within three days after said election, make returns of the votes cast for said commissioners to the secretary of the Commonwealth. The secretary, upon receiving such returns, shall transmit them to the governor and council, and the governor, with at least five of the council, shall, within five days, examine them, and he shall notify such persons as appear to have been elected.

SECT. 2. The special commissioners above named shall, before entering upon the discharge of their duties, give bonds for the faithful performance of their duties in the sum of fifty

thousand dollars each, in two sufficient sureties satisfactory to the treasurer of the Commonwealth, and returns shall be made in like manner at each succeeding election for a special commissioner under said act.

SECT. 3. This act shall take effect upon its passage.

[*Approved June* 8, 1868.

Commonwealth of Massachusetts.

In the Year One Thousand Eight Hundred and Sixty-Eight.

[Chapter 342.]

AN ACT

TO AUTHORIZE CITIES AND TOWNS TO DISPOSE OF LIQUORS IN THE HANDS OF CITY AND TOWN AGENTS.

Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows :

SECT. 1. The mayor and aldermen of the several cities, and the selectmen of the several towns of this Commonwealth, are hereby authorized to dispose of any liquors which may remain in the hands of the several city or town agents of said cities and towns at the time of the repeal of the eighty-sixth chapter of the General Statutes, to any parties duly licensed to sell and keep the same under the provisions of the one hundred and forty-first chapter of the laws of the year eighteen hundred and sixty-eight, without paying any license therefor.

SECT. 2. This act shall take effect upon its passage.

[*Approved June* 10, 1868.

Commonwealth of Massachusetts.

In the Year One Thousand Eight Hundred and Sixty-Eight.

[Chapter 344.]

AN ACT

IN RELATION TO THE ELECTION OF SPECIAL COMMISSIONERS FOR THE COUNTY OF SUFFOLK, UNDER THE ACT TO REGULATE THE SALE OF INTOXICATING LIQUORS.

Be it enacted by the Senate and House of Representatives, in General Court assembled, and by the authority of the same, as follows:

SECT. 1. Chapter three hundred and eighteen of the acts of the current year is hereby so amended that the election of special commissioners for the county of Suffolk, under the act to regulate the sale of intoxicating liquors, shall be held on the fourth Wednesday of June of the current year.

SECT. 2. This act shall take effect upon its passage.

[*Approved June* 10, 1868.